

9-68.000 TRADEMARK COUNTERFEITING

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Introduction

This chapter focuses on the investigation and prosecution of trademark counterfeiting (18 U.S.C. § 2320). Supervisory responsibility for prosecutions brought under 18 U.S.C. § 2320 rests with the Computer Crimes and Intellectual Property Section of the Criminal Division. Approval authority for all RICO prosecutions rests with the Organized Crime and Racketeering Section of the Criminal Division. *See* USAM 9-110.000 *et seq.* (RICO). Investigative responsibility for complaints of trademark counterfeiting rests with the Federal Bureau of Investigation. Cases involving importation of infringing articles may also be investigated by the United States Customs Service.

Prior authorization from the Criminal Division is not required for initiating prosecutions under 18 U.S.C. § 2320. However, insofar as applicable civil and criminal statutes have been subject to frequent revision, and criminal trademark violations may often involve other violations of Federal criminal laws that protect intellectual property rights, United States Attorneys are encouraged to consult with the Computer Crimes and Intellectual Property Section on such matters.

For a discussion of the law in the area of trademark counterfeiting, see the following sections of the Criminal Resource Manual

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| Introduction | Criminal Resource Manual at 1701 |
| Charging Considerations | Criminal Resource Manual at 1702 |
| Elements -- 18 U.S.C. § 2320 | Criminal Resource Manual at 1704 |
| First Element -- The Defendant Trafficked or Attempted to Traffic in Goods or Services | Criminal Resource Manual at 1705 |
| Joint Statement on Trademark Counterfeiting Legislation | Criminal Resource Manual at 1706 |
| Second Element -- The Defendant's Trafficking or Attempt to Traffic Was Intentional | Criminal Resource Manual at 1713 |
| Third Element -- The Defendant Used a "Counterfeit Mark" | Criminal Resource Manual at 1714 |
| Requirements for a "Counterfeit Mark" | Criminal Resource Manual at 1715 |
| Specific Exclusions from Definition of "Counterfeit Mark" | Criminal Resource Manual at 1716 |
| Fourth Element -- The Defendant Knew the Mark Was Counterfeit | Criminal Resource Manual at 1717 |

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Section 2320(e), as amended by the Anticounterfeiting Consumer Protection Act of 1996, requires the Attorney General to provide Congress with detailed information concerning investigations and prosecutions under the criminal intellectual property statutes, 18 U.S.C. §§ 2318, 2319, 2319A, and 2320. *See* the Criminal Resource Manual at 1703.

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See the Criminal Resource Manual at 1719 for additional information regarding this subject.